

In the Court of the Senior Municipal Magistrate Kolkata

Present :

Shri Pradip Kumar Adhikary,
Senior Municipal Magistrate,
Kolkata, Dist.- Kolkata

Case No.- 345 of 2018

**Arising out of Beliaghata PS Case No.- 50 of 2018 dated 02/03/2018
punishable under section 401A of the Kolkata Municipal Corporation Act, 1980**

State

v.

Samir Das and Dola Rana

Order No.- 15

11/12/2020

Today is fixed for return of service of summons upon the accused Samir Das and return of warrant of arrest against the accused Dola Rana and appearance of the accused and appearance of the Investigating Officer and the Officer-in-Charge, Beliaghata PS in person and filing explanation and written show-cause and submission of additional information/document by the Officer-in-Charge, Beliaghata PS and submission of report by the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata and information in respect of the action taken by him against the concerned Investigating Officer and the Officer-in-Charge, Beliaghata PS.

Out of two (02) accused one (01) accused Samir Das is on court bail.

The charge-sheet is submitted against another accused Dola Rana showing her absconder.

The BC – II is directed to issue warrant of arrest against the accused Dola Rana and notice upon the accused Samir Das at once.

It transpires from the record that pointing out some gross lacuna of the Investigating Officer who investigated the case as well as the Officer-in-Charge of the concerned PS who made final opinion and forwarded/submitted the charge-sheet to the Court for taking cognizance on **12/11/2020** the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata was directed

1. **to look into the matter regarding taking signature or thumb impression of the complainant / informant on the first of the formal FIR and regarding giving copy of the information forthwith, free of cost, to the informant / complainant and ensure that the provisions of law are strictly followed;**
2. **to look into the matter of proper noting in the case diary and ensure that the provisions of law are strictly followed;**
3. **to inquire into the matter of of inordinate delay of more than 02 years and 06 months in forwarding / submitting charge-sheet seriously and take necessary action against the concerned Officer(s) in pursuance of the spirit of the order of the Hon'ble passed in CRR No.- 221 of 2019 and inform the Court of the action so taken by him;**

4. **to initiate necessary disciplinary proceeding action against the concerned Officer-in-Charge, Beliaghata PS and the Investigation Officer for for their dereliction/avoidance/neglect of duty and disobey/violation/breach of the solemn mandates of the Hon'ble Court and inform the Court of the action so taken by him;**
5. **to inquire into the matter to find out whether there is any collusion between the Investigating Agency and the absconder accused Bumba Poddar who is found to be developer of the case premises and whether the investigation has been influenced by any ulterior motives on the part of the Investigating Officer as well as the Officer-in-Charge of the concerned PS and take necessary action against the Officers keeping in mind the Police Order No.- 04 of 2011 and inform the Court of the action so taken by him;**
6. **to look into the matter and ensure that the provisions of law as envisaged in Regulation 138 of the Police Regulations, Calcutta, 1968 are strictly followed;**
7. **to take necessary action against the concerned Officer-in-Charge, Beliaghata PS and the concerned Investigating Officer of this case for the misconduct i.e. violation of the mandates of the Hon'ble Court envisaged in *Mrs. Firdaul Alias Firdoush Jahan vs. State of West Bengal & Ors. : W.P. No.- 7493(W) of 2014* as well as breach of the administrative direction/order of the Commissioner of Police and inform the Court of action so taken by him;**
8. **to inquire into the matter thoroughly to find out whether there is any nexus between the Investigating Agency and the accused person, whether there the investigation was influenced by any dishonesty, biasness and unfairness and whether there is any possibility of collusion and ulterior motive on the part of the concerned Officer-in-Charge, Beliaghata PS as well as the Investigating Officer in this regard and to submit a comprehensive report; and**
9. **to initiate necessary proceeding and / or take necessary action against the erring officers who treat the law to be their sub-servient and inform the Court of the action so taken by him.**

Today enclosing a copy of letter vide Memo No.- EDI/ /20 dated ____/20 addressed to the Deputy Commissioner of Police, South East Division, Kolkata as well as the Deputy Commissioner of Police, East Division, Kolkata the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata sent an information to the Court vide Memo No.- EDI/4284/1/20 dated 09/12/2020 and Memo No.- EDI/4285/1/20 dated 09/12/2020 with a request to make necessary correspondence with the Deputy Commissioner of Police, South East Division, Kolkata as well as the Deputy Commissioner of Police, East Division, Kolkata for future course of action.

From the copy of the letter vide Memo No.- EDI/ /20 dated ____/20 sent to the Deputy Commissioner of Police, South East Division, Kolkata as well as to the Deputy Commissioner of Police, East Division, Kolkata it appears that the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata forwarded the order no.- 14 dated 12/11/2020 passed by this Court to the Deputy Commissioner of Police, South East Division, Kolkata as well as to the Deputy Commissioner of Police, East Division, Kolkata for supervision of investigation of the case as the then IO SI Pravash Majumder is presently posted at Topsia PS which falls under the administrative control of the Deputy Commissioner of Police, South East Division and the then Officer-in-Charge, Beliaghata PS Inspector Chandan Roy Mukherjee is presently posted at Pragati Maidan PS under administrative control of the Deputy Commissioner of Police, East Division, Kolkata.

In sending the said letter to the Deputy Commissioner of Police, South East Division, Kolkata as well as the Deputy Commissioner of Police, East Division, Kolkata the

Deputy Commissioner of Police Eastern Suburban Division, Kolkata also forwarded a copy of report submitted by Officer-in-Charge, Beliaghata PS.

From the copy of report of the Officer-in-Charge, Beliaghata PS it appears that in his report placed before the Deputy Commissioner of Police, Eastern Suburban Division the Officer-in-Charge, Beliaghata PS has stated that on 20/02/2019 he took charge of Beliaghata PS and he is nowhere connected with the registration of FIR, endorsement of the same and supervision of the investigation of the case and as such he has prayed for sending the order of the Court to the then IO Pravash Majumder who is now attached with Topsia PS of South East Division as well as the then Officer-in-Charge, Beliaghata PS Inspector Chandan Roy Mukherjee now working as Officer-in-Charge, Pragati Maidan PS of Eastern Division through the officer of the Joint Commissioner of Police (Crime) for future course of action.

On the basis of the said report of the Beliaghata PS the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata forwarded the copy of order dated 12/11/2020 passed by this Court to the Deputy Commissioner of Police, South East Division, Kolkata as well as the Deputy Commissioner of Police, East Division, Kolkata for supervision of investigation of the case as the then IO SI Pravash Majumder is presently posted at Topsia PS which falls under the administrative control of the Deputy Commissioner of Police, South East Division and the then Officer-in-Charge, Beliaghata PS Inspector Chandan Roy Mukherjee is presently posted as Officer-in-Charge, Pragati Maidan PS which falls under the administrative control of the Deputy Commissioner of Police, East Division, Kolkata.

But the Deputy Commissioner of Police, Eastern Suburban Division has not complied other part of the order of the Court. Except initiating necessary disciplinary proceeding against the concerned Officer-in-Charge, Beliaghata PS and the Investigating Officer and taking necessary action against them the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata was also directed to inquiry into and look into some other matters as stated above and to submit a comprehensive report.

But the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata neither conducted any inquiry nor submitted any report to that effect nor prayed for further time for doing the same. The Deputy Commissioner of Police, Eastern Suburban Division, Kolkata has tried to shift his entire burden upon the Deputy Commissioner of Police, South East Division, Kolkata as well as upon the Deputy Commissioner of Police, East Division, Kolkata without adherence to the order of the Court.

In the above circumstances the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata is directed to appear in person before the Court and file a written explanation why he has not complied the order of the Court.

The Deputy Commissioner of Police, Eastern Suburban Division, Kolkata is further directed to comply the order of the Court dated 12/11/2020 in its letter and spirit.

Since the matter of initiating necessary disciplinary proceeding against the concerned Officer-in-Charge, Beliaghata PS and the Investigating Officer and taking necessary action against them has already been communicated to the Deputy Commissioner of Police, South East Division, Kolkata as well as to the Deputy Commissioner of Police, East Division, Kolkata they are also directed comply the order of the Court in its letter and spirit and the Court shall be informed of the action taken by him against the errant Police Officers.

On 12/11/2020 both the Officer-in-Charge, Beliaghata PS and the Investigating Officer were also directed

1. **to appear in person before the Court and to file written explanation why the provision of law as envisaged in Regulation 138 of the Police Regulations,**

Calcutta, 1968 has not been complied with;

2. **to appear in person and file written show-cause as to why the matter of misconduct i.e. violation of the mandates of the Hon'ble Court envisaged in *Mrs. Firdaul Alias Firdoush Jahan vs. State of West Bengal & Ors.* : W.P. No.- 7493(W) of 2014 as well as breach of the administrative direction/order of the Commissioner of Police shall not be brought to the notice of the Hon'ble Court for taking necessary action them; and**
3. **to appear in person before the Court and to file written show-cause why the necessary proceeding/action shall not be initiated against them for their dereliction/avoidance/neglect of duty and disobey/violation/breach of relevant provisions of law, rules and regulations as well as mandates of the Hon'ble Court and police orders.**

The Officer-in-Charge, Beliaghata PS was further directed **to appear in person before the Court and to file written explanation why the provision of law regarding taking signature or thumb impression of the complainant / informant on the first of the formal FIR and regarding giving copy of the information forthwith, free of cost, to the informant / complainant has not been complied with.**

Shri Chanda Roy Mukherjee, Inspector of Police, the then Officer-in-Charge, Beliaghata PS now posted as Officer-in-Charge, Pragati Maidan PS and the concerned Investigating Officer Shri Pravash Majumder, SI of Police now posted at Topsia PS appeared in person and submitted that last evening they got necessary correspondence from the concerned Division and as such they could not prepare their explanation. Hence, they have verbally prayed for another date for presenting their respective write-up.

The present Officer-in-Charge, Beliaghata PS neither complied order of the Court regarding investigation of the case and collection of necessary document(s) and information and submission of the same being additional document(s) nor filed any explanation for non-compliance of the same nor submitted any application praying for further time for compliance.

Probably, the Officer-in-Charge, Beliaghata has not gone through the order dated 12/11/2020 meticulously or he has failed to grasp the spirit of the said order. After an elaborate discussion on **12/11/2020** the Court directed the Officer-in-Charge, Beliaghata PS

1. **to investigate whether the inspection of the case premises by the Building Department was a routine inspection or the said inspection was conducted on the basis of any telephonic information made, or any written complaint filed, by anybody and if any complaint, either telephonic or written was found to be made or filed with the Kolkata Municipal Corporation regarding the alleged unauthorised construction giving rise to the inspection of the case premises, examine the said person and collect necessary document(s), if any, and submit the same being additional document(s);**
2. **to examine the concerned Sub-Assistant Engineer and / or Assistant Engineer who inspected the case premises, record their statement and collect necessary document(s), if any, and submit the same being additional document(s);**
3. **to examine the de-facto complainant / informant, record his statement and collect necessary document(s), if any, and submit the same being additional document(s);**
4. **to do the needful in the matter of non-citing of him as witness in the charge-sheet;**
5. **to collect relevant document(s) regarding the status of the accused and their**

involvement with the alleged offence and submit the same being additional document(s);

6. to collect relevant information/document regarding the engagement and/or involvement of any technical persons or experts such as Architect, Licensed Building Surveyor, Structural Engineer, Geo- Technical Engineer or Structural Reviewer in the alleged unauthorised, illegal an unlawful construction and submit the same being additional information/document;
7. to carry out relevant/necessary tests on materials and workmanship used at the site and to collect test report carried out, if any, by the any ESE and to submit report being additional document;
8. to collect structural stability certificate, structural inspection report and opinion of the competent expert and ascertain the endangerment of the alleged unauthorised, illegal and unlawful construction and to submit the same being additional document;
9. to ascertain whether the accused provided any safety of workers and others during excavation, construction and erection of the building and collect relevant document to that effect and submit the same being additional document;
10. to collect report from those departments such as water-supply, drainage, sewerage, road traffic and fire in order to ascertain the disruption or hazard caused or likely to cause to those services by the alleged unauthorised, illegal and unlawful construction and also to collect complaint received, and made, by those departments, if any and to submit the same being additional document;
11. to collect Building Rules Infringement Statement and to submit the same being additional document;
12. to submit current status of the case premises along with photographs being additional documents;
13. to investigate whether the concerned Sub-Assistant Engineer (Civil) and Assistant Engineer (Civil) brought the matter to the notice of Executive Engineer (Building) or Deputy Chief Engineer (Building), whether they prepared any Demolition Sketch Plan and whether any proposal for demolition of the alleged building under section 400 of the KMC Act, 1980 was sent to the Director General (Building) through the Executive Engineer (Building) or Deputy Chief Engineer (Building) along with Description of Unauthorized Constructions, Demolition Sketch Map and Building Rule Infringement Statement for necessary approval and submit the same being additional documents;
14. to furnish the e-mail i.d./mobile nos. and Aadhaar card particulars of the public servant witnesses as per mandate of the Hon'ble Court as directed in *Bibekananda Pramanik v. State of West Bengal* : C.R.R. No.- 2434 of 2017;
15. to furnish information about the previous conviction of the accused, if any, and their antecedents being additional information/document;
16. to submit a list of property, movable or immovable belong to the absconder accused; and
17. to intimate the result of investigation of this case to the de-facto complainant in writing and submit compliance report.

It has already been stated that the Officer-in-Charge, Beliaghata PS neither

complied the above directions nor filed any kind correspondence either explaining non-compliance of Court's order or praying for further time for compliance of the order of the Court.

Hence, the Officer-in-Charge, Beliaghata PS is directed to appear in person and filed a written explanation why he has not complied the order of the Court.

The Officer-in-Charge, Beliaghata PS is further directed to comply order of the Court dated 12/11/2020 in its letter and spirit.

To 29/01/2021 for return of service of summons upon the accused Samir Das and return of warrant of arrest against the accused Dola Rana and appearance of the accused and appearance of the Investigating Officer and the then Officer-in-Charge, Beliaghata PS as well as present Officer-in-Charge, Beliaghata PS in person and filing explanation and / or written show-cause and submission of additional information/document by the Officer-in-Charge, Beliaghata PS and appearance of the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata with written explanation and submission of compliance report by him as well as compliance report by the Deputy Commissioner of Police, South East Division, Kolkata and the Deputy Commissioner of Police, East Division and information in respect of the action taken by them against the concerned Investigating Officer and the then Officer-in-Charge, Beliaghata PS.

Let a copy of this order be sent to the Deputy Commissioner of Police, Eastern Suburban Division, Kolkata, the Deputy Commissioner of Police, South East Division, Kolkata and the Deputy Commissioner of Police, East Division, Kolkata for compliance.

Let a copy of this order be also sent to the Officer-in-Charge, Beliaghata PS and also to the then Officer-in-Charge, Beliaghata PS and the concerned the Investigating Officer of this case for compliance.

Let another copy of this order be sent to the Joint Commissioner of Police (Crimes), Kolkata for information and taking necessary action on his part as well as rendering advise, suggestion and assistance, if any, to the Police Officers in this regard.

The BC – II is directed to do the needful at once.

Typed by me

Senior Municipal Magistrate,
Kolkata, Dist.- Kolkata

Senior Municipal Magistrate,
Kolkata, Dist.- Kolkata.